

**EXHIBIT “D”**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF HAWAII  
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4 WAYNE BERRY, a Hawaii Citizen, ) CIVIL NO. 03-00385SOM  
5 Plaintiff, )  
6 vs. )  
7 HAWAII EXPRESS SERVICE, INC., ) - VOLUME 3 -  
8 et al., )  
9 Defendants. )  
9 \_\_\_\_\_ )

10  
11 TRANSCRIPT OF PROCEEDINGS

12 The above-entitled matter came on for hearing on  
13 Wednesday, March 1, 2006, at 9:04 a.m., at Honolulu, Hawaii,  
14 BEFORE: THE HONORABLE SUSAN OKI MOLLWAY  
United States District Judge  
15  
16 REPORTED BY: STEPHEN B. PLATT, RMR, CRR  
Official U.S. District Court Reporter  
17 APPEARANCES: TIMOTHY J. HOGAN, ESQ.  
WESLEY W. ICHIDA, ESQ.  
18 Lynch Ichida Thompson Kim & Hirota  
1032 Bishop Street, Suite 1405  
19 Honolulu, Hawaii 96813

20 Attorneys for the Plaintiffs

21 MICHAEL E. BAUMANN, ESQ.  
DAMIAN D. CAPOZZOLA, ESQ.  
22 Kirkland & Ellis LLP  
777 South Figueroa Street  
23 Los Angeles, CA 90017

24 Attorneys for Defendant  
Post Confirmation trust  
25 for Fleming companies, Inc.

1 APPEARANCES (Continued):

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4 LYLE S. HOSODA, ESQ.  
5 RAINA P.B. MEAD, ESQ.  
6 Lyle S. Hosoda & Associates, LLC  
345 Queen Street, Suite 804  
Honolulu, Hawaii 96813

7 Attorneys for Defendants  
8 Mark Dillon, Teresa Noa,  
9 Melvin Ponce, Sonia Purdy,  
Justin Fukumoto, Alfredda  
Waiolama and Jacqueline Rio

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1                   THE CLERK: Thank you.

2                   Please be seated.

3                   Please state your name and spell your first and last  
4 name.

5                   THE WITNESS: Brian Christensen. B-R-I-A-N,  
6 C-H-R-I-S-T-E-N-S-E-N.

7                   BRIAN CHRISTENSEN,  
8 called as a witness on behalf of the Plaintiff, having been  
9 produced and duly sworn, was examined and testified as  
10 follows:

11                   DIRECT EXAMINATION

12 BY MR. HOGAN:

13 Q. Good morning, Mr. Christensen.

14                   What is your job presently?

15 A. I am the president of C&S Wholesale, the Hawaii division.

16 Q. And what was your job in -- let's say April 1st 2003?

17 A. I was the president of Fleming Companies Hawaii division.

18 Q. And so would it be fair to say that you were the boss of  
19 the people that are the employee defendants here?

20 A. Yes.

21 Q. Okay.

22                   And, Mr. Christensen, what was your understanding --  
23 was it your understanding that it was Fleming's intention as  
24 of April 1st, 2003 to go back to the Berry system as it was  
25 originally configured by Mr. Berry?

1 A. Yes, it was.

2 Q. Okay.

3 And, Mr. Christensen, you were at one time a  
4 defendant in this case; is that correct?

5 A. Yes.

6 Q. Was it your understanding that Fleming had agreed to  
7 indemnify you regarding Mr. Berry's claims?

8 MR. BAUMANN: Objection --

9 MR. HOSODA: Your Honor, objection. Request for  
10 side bar.

11 THE COURT: Well, I don't think it's relevant, so  
12 I'll sustain the objection on relevance grounds.

13 BY MR. HOGAN:

14 Q. Mr. Christensen, during the period after Fleming filed  
15 for bankruptcy on April 1st, 2003, did it close down any  
16 divisions, to the best of your knowledge?

17 A. I believe it did, but I'm not sure if it was on April  
18 1st.

19 Q. And I --

20 A. Sometime after that.

21 Q. And that wasn't what I was trying to imply. But during  
22 the period after April 1st, were there divisions being closed  
23 down?

24 A. I believe so.

25 Q. And was it your understanding that the product from those

1 divisions was being moved to other divisions during that time?

2 A. Possibly.

3 Q. All right.

4 Do you have any understanding of whether Fleming  
5 received any of the product from the other divisions during  
6 the period after April 1st, 2003?

7 MR. BAUMANN: Objection, Your Honor. That question  
8 makes no sense. I thought we were talking about Fleming.

9 MR. HOGAN: I'm sorry.

10 BY MR. HOGAN:

11 Q. Did Fleming Hawaii receive product from the divisions  
12 that were closing down after that period of time?

13 A. Possibly, yes.

14 Q. Okay.

15 Do you have any basis for believing that the  
16 freight -- that it would be handled by Mr. Berry's system  
17 during that time? Or that it wouldn't be handled by his  
18 system during that time, as it was supposed to originally have  
19 been configured?

20 A. Could you rephrase that?

21 Q. Okay, I'll rephrase it.

22 Do you have any basis for believing that this  
23 freight -- or this merchandise that was being received by  
24 Fleming Hawaii was not handled by Fleming Hawaii logistics  
25 department using Mr. Berry's database?

1 A. No.

2 Q. Okay.

3 Did you ever have any belief or understanding that  
4 any of the employees were using Mr. Berry's database for their  
5 own purposes? Personally, rather than as part of their job?

6 A. Do I believe they were using it personally?

7 Q. That's correct.

8 A. No.

9 Q. So is it fair to say that all their use was for Fleming's  
10 business purposes?

11 A. As far as I know, yes.

12 Q. And, isn't it true, sir, that as the head of the  
13 division, you could have just told them to stop using it as of  
14 April 1st?

15 A. Yes.

16 Q. And did you ever tell them to stop using it as of April  
17 1st?

18 A. No.

19 MR. HOGAN: No further questions, Your Honor.

20 THE COURT: Okay.

21 MR. BAUMANN: Your Honor, we're going to recall  
22 Mr. Christensen in our case, so we are not going to examine  
23 him now.

24 THE COURT: So no examination now?

25 MR. HOSODA: That's correct, Your Honor.